

HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 190 of 2001
(Old No. 574 of 1998)

Mahant Ashok Prapanna Sharma

.....Revisionist

Versus

Rakesh Gupta & others

.....Respondents.

Sri V.K. Bisht, Sr. Advocate for the revisionist
Sri Ram Ji Srivastava, Advocate for the respondent.

Dated: - 9.9.2004

Hon'ble Rajesh Tandon J.

Heard the learned counsel for the parties.

Present revision has been filed against the order dated 11.9.1998 passed by the District Judge, Tehri Garhwal in Misc. Case No. 25 of 1997.

Briefly stated the facts giving rise to the present revision are that the revisionist/plaintiff has filed a suit No. 42 of 1985 in the Court of District Judge, Tehri Garhwal for recovery of arrears of rent and eviction, in respect of a piece of land situated in Laxmanjhula Sarai, Rishikesh. The suit was decreed ex parte decree was passed on 6.4.1995. The ex parte decree was later on set aside on 25.10.1995 on the application of defendant Harish Chand and the suit was restored to its original number. Thereafter the suit was dismissed in default of the plaintiff on 1.7.1996. The revisionist plaintiff has filed application under

Order IX Rule 13 for restoration of the suit along with an application under Section 5 of the Limitation Act for condonation of delay.

The said application has been rejected by the District Judge, Tehri Garhwal on the ground that the application is barred by time and day-today delay has not been explained.

The need of society is that there should be justice oriented approach and the application for restoration of a suit, should not be rejected only on the ground of technicalities. The Apex Court has held in (2001) 8 SCC 151, M.S. Grewal vs. Deep Chand Sood as under:

“Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.”

In view of the aforesaid fact, the impugned order passed by the District Judge, Tehri Garhwal cannot be sustained.

The revision is, therefore, allowed. Order dated 11.9.1998 passed by the District Judge, Tehri Garhwal is hereby set aside. The Original Suit No. 45 of 1985, Mahant Ashok Prapanna vs. Harish Chand and others is restored to its original number. The District Judge, Tehri Garhwal is directed to decide the suit on merit within four months after the receipt of the certified copy of this order. No order as to costs.

(RAJESH TANDON J.)

9-9-2004

*Dhyani